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FILE

November 9, 1992

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

92-1001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

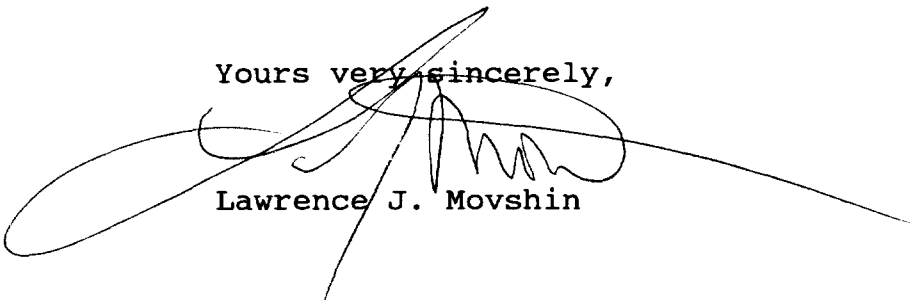
Re: General Docket No. 90-314

Dear Ms. Searcy:

Enclosed please find the original and five copies of the  
Comments of The Small Business PCS Association in the above-  
referenced proceeding.

Any questions regarding this filing should be directed  
to the undersigned.

Yours very sincerely,

  
Lawrence J. Movshin

LJM/att

Enclosure

cc: Dr. Thomas P. Stanley  
Chairman Alfred C. Sikes  
Commissioner James H. Quello  
Commissioner Sherrie P. Marshall  
Commissioner Andrew C. Barrett  
Commissioner Ervin S. Duggan

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**Before The  
FEDERAL COMMUNICATIONS COMMISSION**

**WASHINGTON, D.C. 20554**

In The Matter Of	)	GEN Docket No. 90-314
	)	ET Docket No. 92-100
Amendment of the Commission's	)	RM-7140, RM-7175, RM-7617
Rules to Establish New Personal	)	RM-7618, RM-7760, RM-7782
Communication Services	)	RM-7860, RM-7977, RM-7978
	)	RM-7979, RM-7980

To: The Commission

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**COMMENTS OF  
THE SMALL BUSINESS PCS ASSOCIATION**

**SUMMARY**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Small Business PCS Association ("**SBPCS**") hereby responds to the Commission's Notice of Proposed Rule Making and Tentative Decision in the above-captioned proceeding. The **SBPCS** was formed to be a voice for the small businesses that are actively participating in the PCS industry. While the NPRM represents an extremely important step by the Commission toward the achievement of PCS in this country, it is critical that the rules for PCS be adequately inclusive to ensure that small entrepreneurs are encouraged to participate in building and operating the enormous infrastructure that will be needed to create the variety of PCS services that the Commission envisions.

**SBPCS** strongly supports the use of smaller, more manageable service areas. There are substantial reasons for utilizing smaller areas that offset any potential benefits to be achieved by regionalizing or nationalizing the PCS licensing process. Service areas should be assigned using a "Super County" approach,

yielding 450 licensed areas. For the larger counties, county boundaries will be used to define the service area. Where counties have less than 500,000 population, neighboring counties will be combined, using BTA boundaries or multiple BTA's, until the aggregate population exceeds 500,000. Major metropolitan areas will thus be divided into smaller, more manageable units and small rural areas will be combined into economically viable units.

**SBPCS** proposes two provisions as eligibility requirements that will allow many more companies to participate in a truly competitive PCS environment. The Commission should set aside one license in each licensing area for companies that meet the criteria of a "small business". In addition, each applicant for the "small business" set-aside license must be required to show existing financial capability by including with its application a cashier's check or other proof of an existing credit facility for a substantial sum, e.g., \$1 million.

Speculation can be almost totally eliminated by imposing a high level of application entry barrier and by imposing two post-licensing requirements. First, the Commission should require that if a license or company owning a license is sold within two years of acquiring the license, the license will be forfeited. Second, it should be mandated that at least 0.5% of the population covered by the license must be subscribing to the licensee's service within two years of license award, or the license will be forfeited.

**Before The**  
**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

In The Matter Of	)	GEN Docket No. 90-314
	)	ET Docket No. 92-100
Amendment of the Commission's Rules to	)	RM-7140, RM-7175, RM-7617
Establish New Personal Communications	)	RM-7618, RM-7760, RM-7782
Services	)	RM-7860, RM-7977, RM-7978
	)	RM-7979, RM-7980

To: The Commission

**COMMENTS OF**

**THE SMALL BUSINESS PCS ASSOCIATION**

The Small Business PCS Association ("**SBPCS**") hereby responds to the Commission's Notice of Proposed Rule Making and Tentative Decision (FCC 92-333, released August 14, 1992) in the above-captioned proceeding. The **SBPCS** was formed to be a voice for the small businesses that are actively participating in the PCS industry. The association membership is composed entirely of small business holders of PCS Experimental Licenses. The organizer of **SBPCS** is **kycom**, Inc. **kycom** is a small entrepreneurial company that has been established to provide PCS service in the state of California. The company has been granted an experimental license to conduct market trials involving 3000 customers in San Jose, Sacramento, and Los Angeles, California. Work is progressing to implement these trials with operation scheduled to begin in the first half of 1993.

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The NPRM represents an extremely important step by the Commission toward the achievement of PCS in this country. At **SBPCS** we understand that the real objective is to provide a high quality PCS service to the public. To accomplish this it is necessary to have not only good entrepreneurial instincts, but also the experience and financial resources to follow through with the quality of service that the public expects from their telephone system.

It is critical that the rules for PCS be adequately inclusive to ensure that small entrepreneurs are encouraged to participate in building and operating the enormous infrastructure that will be needed to create the variety of PCS services that the Commission envisions. Most of the discussions so far relating to PCS have centered around some of the largest communications companies in the United States. **SBPCS** is making an effort to voice the views and concerns of some of the other vital players in the PCS industry that are not among the largest companies of the country. We hope to pave the way for other responsible smaller organizations to participate in the upcoming PCS industry. To be sure that the voice of the smaller entrepreneurs are added to the mix of the many well-heeled companies who have participated in the PCS debate to date, **SBPCS** is participating in this proceeding at this time.

While **SBPCS** has opinions on many of the topics covered in the NPRM, we feel that it will be most productive for us to focus on major issues which will have a substantial and critical impact on the ability of smaller companies to participate meaningfully in the development of PCS. By focusing our comments in this way, we feel we will provide input to the Commission which which, if adopted, will substantially improve the quality of service and shorten the lead time before service is available to the public.

**A. 2 GHz Service Areas**

The NPRM states four guiding values that should be used by the Commission in establishing the regulatory structure for PCS: (1) speed of deployment; (2) diversity of services; (3) competitive delivery; and (4) universality. No single section of the proposed rules for 2 GHz tests these values more than the definition of service areas that will be used in licensing PCS operators. **SBPCS** proposes a modification to the approach presented in the NPRM that significantly enhances each one of these values.

**SBPCS** strongly supports the use of smaller, more manageable service areas. There are substantial reasons for utilizing smaller areas that offset any potential benefits to be achieved by regionalizing or nationalizing the PCS licensing process. Indeed, the few reasons for taking such an approach are, in **SBPCS's** view, without merit. On the other hand, although we support the use of Basic Trading Areas (BTA's) in some parts of the country they do not work in most regions and were not designed with the provision of wireless services in mind. They will not, in urbanized areas, allow for real participation by smaller businesses; indeed, given the size of the largest BTA's, only a handful of companies would be able to develop many of the urban systems, and even these would be hard pressed to do so on an expeditious and universal basis.

**SBPCS** suggests that service areas be assigned in accordance with a modification of the Basic Trading Area (BTA) concept. The reason for this is that BTA's for major metropolitan areas are too large for small businesses to be involved, e.g. Los Angeles at 14.8 million people and San Francisco at 6.5 million people. On the other hand, BTA's for many rural areas of the country are too small to be economically viable, e.g. Yuba City, CA at 124,400 or Williston, ND at 26,800 people.

**SBPCS** recommends a "Super County" approach to assigning Service Areas. For the larger counties, county boundaries will be used to define the service area. Where counties have less than 500,000 population, neighboring counties will be combined until the aggregate population exceeds 500,000. Since BTA's are formed along county lines BTA boundaries, or multiple BTA's, will be used for this consolidation where possible.

The proposed Super County approach will yield 450 licensed areas, slightly less than the 487 Basic Trading Areas in the NPRM. But, more importantly, major metropolitan areas will be divided into smaller, more manageable units and small rural areas will be combined into economically viable units. Since it will be virtually impossible for a small business to operate a service area of greater than 3 million people, it is interesting to examine the number of these very large service areas which will be licensed. For example, there are 12 BTA's nationally that exceed 3 million population and which would be beyond the reach of small business. There are only two counties in the country that exceed 3 million population.

The San Francisco Basic Trading Area (which includes San Jose) covers 6.5 million people. With the Super County approach this region is divided into 6 service areas with populations ranging from 700,000 to 1.5 million people. For Los Angeles the Basic Trading Area covers 14.8 million people. This area is also divided into 6 Super Counties. Los Angeles County, which includes 8.9 million people and is the largest county in the country, is out of reach for small business. However the other 5 Super Counties in the Los Angeles BTA range from a population of 680,700 to 2.5 million and are quite feasible for small business.

A rural portion of the country is typified by Montana and North Dakota. These two states together are composed principally of 13 BTA's (some cross state lines). With the Super County

approach, these two states would be divided into three service areas, each with population between 500,000 and 600,000.

The problem of making the major metropolitan service areas of the country off limits to all but the largest corporations is even more serious than it first appears. The PCS concept is to use smaller cells in order to provide a lower cost wireless service to much larger numbers of customers at a significantly reduced price. By its very nature of being a service for large numbers of customers, PCS fits much better in the more populated areas. This is contrasted with Cellular which is used very effectively in sparsely populated areas.

Therefore a service area definition that keeps all but the largest companies out of the more populated areas of the country implicitly forces smaller companies out of most of the PCS industry. This will substantially slow the speed of deployment of PCS and reduce competitive delivery and diversity of services.

Certain advantages have been promoted for larger service areas which in **SBPCS's** view do not justify this approach. First, as to universality, it is said that having national licenses will create a common equipment standard. There is some validity to this argument, particularly if there is only one national licensee. However **SBPCS** believes it is best to establish the U.S. standard(s) through an objective standards-making body rather than by default with the company with the most money to spend in acquiring a license setting the standard.

Some say that it is inefficient to implement anything but a very large PCS system. This is totally contrary to the way that our nations telecommunications network, wired and wireless, has been developed. The basic unit of telephone service is the area covered by a single switch. The



proposed service area of at least 500,000 population fits very nicely with a typical switch which might cover about 60,000 subscribers in a normal metropolitan area.

It is also said that smaller licensed areas will increase license processing time through the FCC. The 450 Super Counties proposed here would require slightly less processing time than the 487 Basic Trading Areas in the NPRM. But, more importantly, it is felt that lessons learned in licensing the 734 cellular service areas will permit streamlining of the administrative procedures for PCS licensing to be significantly shorter than for cellular (not to mention that comparative hearings for the 30 largest markets will probably not be required).

An argument made against smaller service areas is that in a number of other business areas, including cellular, a major consolidation took place and what started as a number of independently owned service areas was consolidated under a much smaller number of owners. Why not short circuit this process and award licenses to a small number of owners from the start? The reason why not is speed of deployment. It has been demonstrated in both the cable and cellular industries that rapid deployment is best achieved by many providers working in parallel. Once deployed there is an argument for the efficiencies of scale associated with consolidation, but only after the system has been 80-90% built.

Furthermore, if a national license was awarded the winner would be able to implement only a few of the most lucrative areas of the country right away. The rest of the country would be significantly delayed or auctioned in a second round of negotiations which will only further delay the ultimate deployment of PCS.

By any account the infrastructure required to deploy PCS will be enormous. We estimate that around 200,000 base stations will be required to completely cover a 100 mile square area.

Even though some others have made lower estimates, there is general agreement that the required infrastructure will be substantially greater than cellular. Implementing this infrastructure will require many organizations, both large and small, working in parallel. Therefore the population of service areas in all parts of the country must be kept small enough so that a large number of businesses are able to participate in deployment of the PCS infrastructure.

**B. Eligibility Requirements.**

Virtually all of the controversy surrounding eligibility relates to a strong desire to assure that parties who apply are sincerely interested and capable of building a PCS infrastructure expeditiously. Such an approach should encourage capable operators and discourage speculators from participating in the licensing process. To that end, **SBPCS** proposes two provisions as Eligibility Requirements that will allow PCS to deploy faster and allow many more companies to participate in a truly competitive PCS environment while also discouraging speculators.

**1. Small Business Set-Aside of One License in Each Service Area**

Small businesses should be given a meaningful chance to participate in PCS operations. While it cannot be denied that many well-heeled companies have been involved in advancing the state of technology, still the FCC has historically placed substantial reliance on small business entrepreneurs to develop systems on a local basis, designed to meet local communications needs. From the initial development of the telephone network, through the initial construction of radio common carrier networks, paging services, specialized mobile radio services, and all but the largest cellular systems, the Commission has taken steps to encourage small businesses to develop systems targeted to the local user.

Small business participation in PCS is not just a desirable gesture to show support for the small businesses of the country, it is a requirement for timely deployment of the massive PCS infrastructure discussed in section 1 above. It will be virtually impossible for even the best funded entities to implement a nationwide PCS service quickly without many small companies working in parallel with the large organizations to implement the service.

To achieve a relatively rapid build-out of systems, the Commission should focus on the numerous interested small business entrepreneurs as a major national resource to be applied to the job of building the large PCS infrastructure. It must, however, take steps in the PCS licensing process to assure that small businesses are able to participate in this new industry and are not frightened away, as many already have been, by the apparent domination of the PCS licensing proceeding by large company interests.

This is not to say that eligibility for participation in the PCS business should be open to anyone. While it makes sense to give a small business advantage to companies that have the commitment and the capacity to build a viable PCS operating system, eligible entities should be limited to those with applicable expertise and adequate financial resources to build a good quality PCS system.

Specifically, we recommend that the Commission set aside one license in each licensing area for companies that meet the criteria of a "small business". To be eligible for such a license, the applicant would have to demonstrate (1) that it is an independent company with less than a certain number of employees; in meeting this test, all owners would be subject to the Commission's normal ownership attribution rules in determining the size of the entire "control" group of affiliated entities; and (2) that it has experience operating a radio system, public or

private, under an FCC license, which has (or has had) at least 100 "subscribers". In addition, we firmly believe that each applicant for the "small business" set-aside license must be required to show existing financial capability by including with its application a cashier's check or other proof of an existing credit facility for a substantial sum, e.g., \$1 million.

**SBPCS** understands that these tests impose some burden on an entrepreneur who wants a "small business" PCS license. The financial test proposed is particularly significant, but in **SBPCS's** view critically important, because a viable PCS system cannot be built by a small business unless it is staffed by qualified entrepreneurs, experienced in the telecommunications field, who are capable of convincing the financial community prior to applying for a PCS license that they have the wherewithal to prosper in the upcoming PCS market. The small businesses that find raising even this amount of money difficult on the basis of their expertise (as opposed to being based on the value of the license that they may win in a lottery) should not be allowed to clutter the agency's applications process; such applicants can only be considered speculators for this purpose.

## **2. Discouraging Speculators**

The Commission's recent licensing efforts have been hindered by the participation of an overwhelming number of applicants. While the agency has attempted to limit speculation, efforts to date have not succeeded. An auction has the potential for eliminating the lower ante speculators who have little interest in dipping deeply into their own pockets to participate in the licensing process. But the large profits which have been made from the sale of licenses by cellular lottery winners will definitely encourage a great deal of high stakes speculation. Such speculation will have the unfortunate result of twice driving up the cost of licenses for serious operators, once

at the initial auction and again when the speculators resell licenses for maximum profit. The public users of PCS will ultimately pay for the speculators' profits.

At **SBPCS** we feel that speculation can be almost totally eliminated by imposing a high level of application entry barrier, as described above and by imposing two post-licensing requirements, whether the license is awarded through a random selection process or through an auction. The \$1 million deposit suggested above for a small business license should apply to all license applications to limit speculators from applying. Two post-licensing requirements should also be imposed. First, the Commission should require that if a license or company owning a license is sold within two years of acquiring the license, the license will be forfeited. This will assure that licensees are committed to the building and operation of a system before they enter the licensing process. Second, it should be mandated that at least 0.5% of the population covered by the license must be subscribing to the licensee's service within two years of license award, or the license will be forfeited.

Each of the post licensing requirements is designed to assure that those who obtain a PCS license do in fact make a serious effort to implement the license by providing PCS to the public. These requirements assure that only serious licensees apply, that the licensee stays in the game long enough to carry out a reasonable construction and operating effort, and that the licensee puts forth a real effort to create a viable PCS service. Most importantly, the post licensing requirements make owning a license of no value as a "fast trade" for quick profit.

While exceptions might be necessary for mergers or acquisitions which are clearly part of a much larger transaction, or for transfers of systems associated with bona fide bank or vendor financing of the system to allow banks and lenders to fund new operators in the event of a system

foreclosure, the concepts can work. These types of post-licensing restrictions are, in **SBPCS's** view, essential for limiting license speculation.

### **C. Conclusion**

**SBPCS** firmly believes that small entrepreneurs have a substantial role to play in the deployment of PCS services and infrastructure in the United States. Like every other communications advance, the small entrepreneur has the incentives to deploy services quickly and ubiquitously in their sphere of influence and expertise. The rules for PCS should be drawn to encourage – indeed, to assure – this sector's participation in this burgeoning industry. Moreover, the rules should be designed to assure that serious entrepreneurs are given a reasonable chance to participate without being burdened by unreasonably-sized Service Areas or an unpredictable licensing process filled with applicant speculators. **SBPCS** believes that the types of proposed changes described herein will achieve these objectives and, at the same time, best satisfy the FCC's guiding values for establishing the regulatory structure for PCS.

Respectfully submitted,

**THE SMALL BUSINESS PCS ASSOCIATION**

A handwritten signature in black ink, appearing to read "Robert H. Kyle", is written over a horizontal line.

Robert H. Kyle  
President, **kycom, Inc.**  
Its Chairman

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Of Counsel  
November 9, 1992